

ASSEMBLY BILL

No. 436

**Introduced by Committee on Insurance (Solorio (Chair), Hagman
(Vice Chair), Carter, Hayashi, Miller, Torres, and Wieckowski)**

February 14, 2011

An act to amend Section 1758.992 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 436, as introduced, Committee on Insurance. Insurance: guaranteed automobile protection.

Existing law defines guaranteed automobile protection (GAP) insurance as insurance in which a person agrees to indemnify a vehicle purchaser or lessee for any of the difference between the actual cash value of the insured's vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle.

This bill would define GAP insurance to also cover the difference between money received from the purchaser's or lessee's automobile insurer and some or all of the amount owed on the vehicle at the time of the unrecovered theft or total loss.

Existing law provides that the following is not GAP insurance and does not require an insurance license to sell: (1) a promise contained in a conditional sales contract for the sale of a vehicle by a licensed motor vehicle dealer or a promise contained in a lease agreement for the lease of a vehicle by a licensed motor vehicle dealer or leasing company to waive all or a portion of the difference between the actual

cash value of the insured's vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle; and (2) a promise by a lender, as part of a debt obligation, to purchase or lease a vehicle in which the lender agrees to waive all or a portion of the difference between the actual cash value of the insured's vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle.

This bill would expand the contractual promises exempt from the definition of GAP insurance and from requiring an insurance license to sell, to include the amount owed on the vehicle at the time of an unrecovered theft or total loss, after credit for money received from the purchaser's or lessee's automobile insurer or from a 3rd party liability insurer, and that the promise may also include a promise to waive some or all of the amount of the purchaser's or lessee's deductible.

Existing law requires that the above contractually promised coverage may not include a promise to pay money to a vehicle purchaser or lessee in addition to waiving the difference between the actual cash value and the amount owed.

This bill would additionally prohibit coverage resulting in a credit balance in favor of the purchaser or lessee.

The bill would also make conforming and related changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1758.992 of the Insurance Code is
- 2 amended to read:
- 3 1758.992. As used in this article, the following definitions have
- 4 the following meanings:
- 5 (a) "Enrollment" means the process of soliciting or accepting
- 6 enrollments or applications from a debtor under a credit insurance
- 7 policy, which includes informing the debtor of the availability of
- 8 coverage, calculating the insurance charge, preparing and delivering
- 9 the certificate of insurance or notice of proposed insurance,

1 answering questions regarding the coverage, or otherwise assisting
2 the debtor in making an informed decision whether or not to elect
3 to purchase credit insurance.

4 (b) "Creditor" means a lender of money or a vendor or lessor
5 of goods, services, property, rights, or privileges, for which
6 payment is arranged through a credit transaction, or any successor
7 to the right, title, or interest of that lender, vendor, or lessor, and
8 any affiliate, associate, subsidiary, subcontractor, director, officer,
9 or employee of any of them or any other person in any way
10 associated with any of them.

11 (c) "Credit insurance agent license" means an agent license
12 issued to an individual or organization for the enrollment and sale
13 of credit insurance.

14 (d) "Credit insurance" includes credit life insurance, credit
15 disability insurance, credit involuntary unemployment insurance,
16 credit loss-of-income insurance, credit property insurance, or
17 guaranteed automobile protection (GAP) insurance.

18 Credit insurance also includes any other form of insurance
19 offered in connection with an extension of credit that is limited to
20 partially or wholly extinguishing that credit obligation that the
21 commissioner determines should be designated a form of credit
22 insurance.

23 The commissioner may adopt, pursuant to Chapter 3.5
24 (commencing with Section 11340) of Part 1 of Division 3 of Title
25 2 of the Government Code, reasonable rules and regulations
26 necessary to carry out this subdivision.

27 (e) (1) "Credit life insurance" means insurance on the life of a
28 debtor pursuant to or in connection with a specific loan or other
29 credit transaction, exclusive of any insurance procured at no
30 expense to the debtor. Insurance shall be deemed procured at no
31 expense to the debtor unless the cost of the credit transaction to
32 the debtor varies depending on whether or not the insurance is
33 procured.

34 (2) "Credit disability insurance" means insurance on a debtor
35 to provide indemnity for payments becoming due on a specific
36 loan or other credit transaction while the debtor is disabled, as
37 defined in the policy, exclusive of any insurance procured at no
38 expense to the debtor. Insurance shall be deemed to have been
39 procured at no expense to the debtor unless the cost of the credit

1 transaction to the debtor varies depending on whether or not the
2 insurance is procured.

3 (f) “Credit involuntary unemployment insurance” or “credit
4 loss-of-income insurance” means insurance issued to provide
5 indemnity for payments becoming due on a specific loan or other
6 credit transaction while the debtor is involuntarily unemployed,
7 as defined in the policy.

8 (g) “Credit property insurance” means insurance that provides
9 coverage (1) on personal property pledged or offered as collateral
10 for securing a personal or consumer loan, or (2) on personal
11 property purchased under an installment sales agreement or through
12 a consumer credit transaction, but does not include any insurance
13 that provides theft, collision, liability, property damage, or
14 comprehensive insurance coverage in any automobile or any other
15 self-propelled vehicle that is designed primarily for operation in
16 the air or on the highways, waterways, or sea, and its operating
17 equipment, or that is necessitated by reason of the liability imposed
18 by law for damages arising out of the ownership, operation,
19 maintenance, or use of those vehicles. However, that excluded
20 insurance does include single interest coverage on any of those
21 vehicles that insures the interest of the creditor in the same manner
22 as collateral secures a loan.

23 (h) (1) “Guaranteed automobile protection” (GAP) insurance
24 means insurance in which a person agrees to indemnify a vehicle
25 purchaser or lessee for ~~any of the difference between the actual~~
26 ~~cash value of the insured’s vehicle at the time of an unrecovered~~
27 ~~theft or total loss and the amount owed on the vehicle pursuant to~~
28 ~~the terms of a loan, lease agreement, or installment sales contract~~
29 ~~used to purchase or lease the vehicle. GAP insurance may also~~
30 ~~include a promise to pay up to five thousand dollars (\$5,000) to~~
31 ~~an insured, in addition to the sum needed to indemnify the insured~~
32 ~~for the difference between the actual cash value and the outstanding~~
33 ~~debt, to purchase or lease another vehicle some or all of the amount~~
34 ~~owed on the vehicle at the time of an unrecovered theft or total~~
35 ~~loss, after credit for money received from the purchaser’s or~~
36 ~~lessee’s physical damage insurer, pursuant to the terms of a loan,~~
37 ~~lease agreement, or conditional sales contract used to purchase~~
38 ~~or lease the vehicle. GAP insurance, whether sold by a credit~~
39 ~~insurance agent or another type of licensee authorized to sell GAP~~
40 ~~insurance, may also include a promise to pay up to five thousand~~

1 *dollars (\$5,000) to an insured, in addition to the sum needed to*
2 *indemnify the insured for the amount owed, to purchase or lease*
3 *another vehicle.*

4 (2) GAP insurance does not include, and no insurance license
5 of any type under this code is required to offer, any of the
6 following:

7 ~~(A) A promise contained in a conditional sales contract for the~~
8 ~~sale of a vehicle by a licensed motor vehicle dealer or a promise~~
9 ~~contained in a lease agreement for the lease of a vehicle by a~~
10 ~~licensed motor vehicle dealer or leasing company to waive all or~~
11 ~~a portion of the difference between the actual cash value of the~~
12 ~~insured's vehicle at the time of an unrecovered theft or total loss~~
13 ~~and the amount owed on the vehicle pursuant to the terms of a~~
14 ~~loan, lease agreement, or installment sales contract used to purchase~~
15 ~~or lease the vehicle.~~

16 ~~(B) A promise by a lender as part of a debt obligation to~~
17 ~~purchase or lease a vehicle in which the lender agrees to waive all~~
18 ~~or a portion of the difference between the actual cash value of the~~
19 ~~insured's vehicle at the time of an unrecovered theft or total loss~~
20 ~~and the amount owed on the vehicle pursuant to the terms of a~~
21 ~~loan, lease agreement, or installment sales contract used to purchase~~
22 ~~or lease the vehicle.~~

23 ~~(C) Coverage under subparagraphs (A) and (B) may not include~~
24 ~~a promise to pay money to a vehicle purchaser or lessee in addition~~
25 ~~to waiving the difference between the actual cash value and the~~
26 ~~amount owed. For purposes of this paragraph, a promise to pay~~
27 ~~money does not include, and a dealer shall be allowed to offer, a~~
28 ~~discount or credit provided to a consumer as an incentive for~~
29 ~~purchasing or leasing a new vehicle if the consumer is required to~~
30 ~~use the discount or credit on a purchase or lease from the dealer~~
31 ~~that sold or leased the original vehicle to the consumer.~~

32 (A) *A promise contained in a conditional sales contract for the*
33 *sale of a vehicle by a licensed motor vehicle dealer, or a promise*
34 *contained in a lease agreement for the lease of a vehicle by a*
35 *licensed motor vehicle dealer or leasing company, to waive some*
36 *or all of either of the following:*

37 (i) *The difference between the actual cash value of the*
38 *purchaser's or lessee's vehicle at the time of an unrecovered theft*
39 *or total loss and the amount owed on the vehicle pursuant to the*

1 *terms of a lease agreement or conditional sales contract used to*
2 *purchase or lease the vehicle.*

3 *(ii) The amount owed on the vehicle at the time of an*
4 *unrecovered theft or total loss, after credit for money received*
5 *from the purchaser's or lessee's physical damage insurer or from*
6 *a third-party liability insurer. Such a promise may also include a*
7 *promise to waive some or all of the amount of the purchaser's or*
8 *lessee's deductible.*

9 *(B) A promise by a lender as part of a debt obligation to*
10 *purchase or lease a vehicle in which the lender agrees to waive*
11 *some or all of either of the following:*

12 *(i) The difference between the actual cash value of the*
13 *purchaser's or lessee's vehicle at the time of an unrecovered theft*
14 *or total loss and the amount owed on the vehicle pursuant to the*
15 *terms of the debt obligation used to purchase or lease the vehicle.*

16 *(ii) The amount owed on the vehicle at the time of an*
17 *unrecovered theft or total loss, after credit for money received*
18 *from the purchaser's or lessee's physical damage insurer or from*
19 *a third-party liability insurer. Such a promise may also include a*
20 *promise to waive some or all of the amount of the purchaser's or*
21 *lessee's deductible.*

22 *(C) Coverage under subparagraphs (A) and (B) may not result*
23 *in a credit balance in favor of the vehicle purchaser or lessee or*
24 *include a promise to pay money to a vehicle purchaser or lessee*
25 *in addition to waiving some or all of the amount owed, including*
26 *some or all of the amount of the purchaser's or lessee's deductible.*
27 *For purposes of this paragraph, a promise to pay money does not*
28 *include, and a dealer, creditor, or lender shall be allowed to offer,*
29 *a discount or credit to a purchaser or lessee as an incentive for*
30 *purchasing, leasing, or financing a replacement vehicle. However,*
31 *the purchaser or lessee shall be required to use the discount or*
32 *credit on a purchase or lease from the dealer or lessor that sold*
33 *or leased the original vehicle to the purchaser or lessee, or with*
34 *the creditor or lender that financed the purchase or lease of the*
35 *original vehicle.*

36 SEC. 2. This act is an urgency statute necessary for the
37 immediate preservation of the public peace, health, or safety within
38 the meaning of Article IV of the Constitution and shall go into
39 immediate effect. The facts constituting the necessity are:

- 1 In order to clarify the legality of contracts and the benefits
- 2 available under those contracts currently being marketed, it is
- 3 necessary that this act take effect immediately.

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